

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SOLAE, LLC,  
A Delaware limited liability company,

Plaintiff,

vs.

HERSHEY CANADA INC.  
an Ontario, Canada corporation,

Defendant

C.A. No. 07-140-JJF

AFFIDAVIT OF CARMEN COMPAS  
(sworn June 25, 2007)

1. I have been employed by Solae, LLC ("Solae") and one of its predecessor companies for approximately 17 years. My current position is Senior Account Manager II in the Protein Division. I have been responsible for Solae's sales of isolated soy protein products to The Hershey Company ("Hershey") since approximately 2004, and I am employed at Solae's St. Louis, Missouri headquarters.

2. I have knowledge of the matters to which I hereinafter depose, except for matters that I have stated in this affidavit are based on information provided to me by others, all of which information I believe to be true.

3. I have read an Affidavit of Kimberly McLucas sworn May 18, 2007. I am swearing this affidavit to comment upon certain portions of Ms. McLucas' affidavit.

4. During the approximately three years in which I was responsible for some of Solae's Hershey sales accounts, I engaged in the type of process of setting the price for the sale of Solae products which is discussed in paragraphs 4 to 13 of Ms. McLucas' affidavit. In this regard, I never dealt with Ms. McLucas rather I dealt with Mr. Doug Soliday, who is the Manager of Specialty Ingredients in the Global Procurement department of Hershey, based in Hershey, Pennsylvania.

5. Based on my experience working with Hershey accounts from 2004 to 2007, the nature of the price agreements differs from the way in which it is described in paragraph 13 of Ms. McLucas' affidavit.

6. Typically, Mr. Soliday would provide me with a projection of the volume of a given Solae product that he anticipated the Hershey plants would order from Solae in a 12-month period, and we would then agree on the price that would apply to the sales of that product to those Hershey plants in that year. Contrary to paragraph 13 of Ms. McLucas' affidavit, I did not understand that this process and the price agreement was contractually obligating Hershey to purchase that particular volume of the Solae product in that year.

7. Mr. Soliday himself consistently referred to the volume of orders for the subsequent year as "projected volumes". Consistent with that, I understood that while Mr. Soliday was making his best estimate of the projected volume of orders, acting in a good faith, he was not formally committing Hershey to purchase that precise amount of product in the upcoming year.

8. Ms. McLucas attached as Exhibit B to her affidavit a document which she referred to as a "Quantity Contract". To the best of my recollection, prior to the beginning of 2007, no one at Hershey or Hershey Canada had ever sent to me a document like Exhibit B of Ms. McLucas' affidavit, nor do I recall having seen any such document prior to February 2007. No other Solae personnel has said to me that Hershey or Hershey Canada had sent that type of document to them.

9. The first time that I can recall having seen such a "Quantity Contract" document was in February 2007. In the first week of February 2007, Mr. Soliday had sent me an email requesting a price quote for the sale of Soy Protein Isolate, XT 219D for a new product to be made at Hershey Canada's Smith Falls, Ontario plant. Following an exchange of emails and phone calls, Mr. Soliday and I agreed that Solae would sell that product to Hershey at a price of US\$5.49 per kilo. Attached as **Exhibit 1** is a copy of that exchange of emails between Mr. Soliday and me on February 1, 2007 and February 7, 2007.

10. On February 9, 2007 I received a phone call from an employee of Hershey who identified herself as Cindy Currey. Ms. Currey told me that she was trying to fax a document to me but it was not going through. I asked her what fax number she was using. Ms. Currey told me that the fax number she was using was 314-982-4833. I told Ms. Currey that that was an out-dated fax number for Solae, and I gave her my current fax number. Later that day, I received by fax from Ms. Currey a "Quantity Contract" document similar to the document marked as Exhibit B to Ms. McLucas' affidavit. A copy of the fax which I received from Ms. Currey is attached as **Exhibit 2**.

11. Neither Mr. Soliday nor any other Hershey representative told me why, at this time in February 2007, Hershey had decided to send this document.

12. The front page of the Quantity Contract at Exhibit 2 states in upper case letters "CONTRACT QUANTITIES ARE APPROXIMATE BASED ON PROJECTED PRODUCTION REQUIREMENTS AND WILL BE RELEASED AS NEEDED BY THE PLANT". That is consistent with my understanding of the meaning and effect of the volume projection in the price agreements between Hershey and Solae.

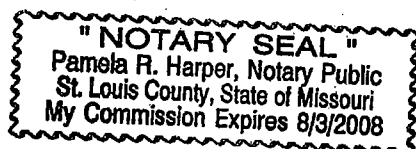
13. The last page of the fax which I received from Hershey on February 9, 2007 is a sheet headed "Terms and Conditions". As far as I can recall, I had not previously received, or seen, that type of document from Hershey or Hershey Canada prior to February 2007.

I declare under penalty of perjury that the foregoing is true and correct.

SWORN BEFORE ME in St. Louis,  
MO, this day on June 25, 2007.

Notary:

*Pamela R. Harper*



*Carmen Compas*  
CARMEN COMPAS

## **Exhibit 1**

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Carmen J. Compas/PROTEIN  
02/07/2007 03:57 PM

To "Soliday, Doug" <dsoliday@hersheys.com>  
ccurrey@hershey.com  
cc ccompas@solae.com

bcc

Subject Re: New Item Soy Protein Isolate, XT 219D

Doug, I left you a voice mail about the pricing and I have added the details below.

If you have additional questions please call me. I am going to be at Hershey tomorrow and Friday AM if you need to sit down and talk. My cell is 314-378-4111.

Minimum order is five pallets

Lead time on orders is two weeks; then you have to figure five to six business days for shipping to Canada.

Product Item number	Price per Kilo US dollars FOB our plant	Package size	Bags per pallet
Supro XT219D 10001724	\$5.37	20 KG bags	50

Thank you

Carmen Compas  
ccompas@solae.com  
office # 314-659-3091  
cell # 314-378-4111

"Soliday, Doug" <dsoliday@hersheys.com>

02/01/2007 04:23 PM

To <ccompas@solae.com>  
cc

Subject New Item Soy Protein Isolate, XT 219D

Hi Carmen

I have another opportunity for you, could you please provide me with pricing for Soy Protein Isolate, XT 219D

Also need Pack types, lead times and min order quantity ...

This new item is scheduled to be made at our Smith Falls Plant, Ontario Canada

I do not have any volumes as of yet but will get back to you as soon as I hear anything

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Launch is June/July so I would think production would be March/ April

Thank you

Douglas C. Soliday  
The Hershey Company  
Global Procurement  
Manager of Specialty Ingredients  
PH: 717-534-6541  
Fax: 717-534-8230  
email: dsoliday@hersheys.com

## **Exhibit 2**



FEB-09-2007 FRI 03:43 PM HERSHEY FOODS-COMMODITY

FAX NO. 7175347754

P. 01



The Hershey Company  
Corporate Headquarters  
100 Crystal A Drive  
PO Box 810  
Hershey, Pennsylvania 17033-0810  
Phone: (717) 534-4000  
Fax: (717) 534-7752  
Internet: <http://www.hersheys.com>

## THE HERSHEY COMPANY

Telefax Transmission

TO: Carmen Compas  
FROM: Cindy Carvey Fax (717) 534-7754  
DATE: 2/8/07 FAX NO.: 314-659-5751  
PAGE(S): 3 (including cover sheet)

Message: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you do not receive all the pages or have a question/problem,  
please call (717) 534-7707

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FEB-09-2007 FRI 03:43 PM HERSHEY FOODS-COMMODITY

FAX NO. 7175347754

P. 02

Hershey Canada, Inc.

Quantity Contract/Quantité du Contrat 46045333

A Hershey Foods Company/  
Une Compagnie de Hershey FoodsPage 1  
Date 02/08/2007Invoice To/  
Facturer à:THE HERSHEY COMPANY  
DISBURSEMENTS DEPARTMENT  
PO BOX 800 100 CRYSTAL A DR  
HERSHEY PA 17033-0800Vendor /  
Fournisseur:3008099  
THE SOLAR CO LLC  
23001 NETWORK PLACE  
CHICAGO, IL 60673-1217  
USA

Terms and Conditions on Reverse / Modalités au Verso

Ship To /  
Expéditeur à: Smiths Falls Plant  
Hershey Canada, Inc.  
1 Hershey Drive  
Smiths Falls ON K7A 4T8Vendor Phone/Tél: 314-650-3001 Fax: 219-425-5301  
Confirming to/Confirmer à: Carmen Compas  
Date/Date:Incoterms/Incoterms: FOB DESTINATION  
Contact: Cindy CurryPhone/Tél: 717-534-4471  
Fax: 717-534-7754Vendor Contract/  
Contrat de Fournisseur:Valid From: 02/08/2007  
Valid To: 12/31/2007

Terms/Conditions de Paiement: Within 30 days Due net

Currency/Monnaie: USD

CONTRACT QUANTITIES ARE APPROXIMATE BASED ON PROJECTED PRODUCTION  
REQUIREMENTS AND WILL BE RELEASED AS NEEDED BY THE PLANT

Item/Article	Quantity/Quantité	U/M	Spec No./Code de Produit	Price/Prix	Amount/Montant
00010	10,000.000	Kilogram	1-04675-000 Soy Protein Isolate, Solae, XT 219D	5.37 1/KG	53,700.00

MATERIAL MUST MEET THE HERSHEY COMPANY SPECIFICATIONS.  
MUST COMPLY WITH SEAL CARRIER POLICY

2/6/07 Memphis

2190 5.37 KG

ccurrey@hersheys.com

## Acknowledgement Not Required

The above prices on this purchase order excludes the Goods and Services Tax (GST) and Quebec Sales Tax (QST).

All correspondence, including acknowledgements, quotations and invoices must indicate the following:

- 1) Vendor GST and/or QST registration number
- 2) The GST and/or QST item tax status
- 3) The GST and/or QST separately by each line item
- 4) Total GST and/or QST amount of the invoice

Total Amount/Montant Total: GST 53,700.00

Dans le prix indiqué ci-dessus dans le bon de commande, la taxe sur les produits et services (TPS) et la taxe de vente du Québec (TVQ) ne sont pas comprises.

Toutes la correspondance, y compris les accusés de réception, les propositions de prix et les factures doivent mentionner les renseignements suivants:

- 1) Le numéro d'enregistrement du fournisseur pour la TPS et/ou TVQ
- 2) La situation fiscale de l'article en ce qui concerne la TPS et/ou TVQ
- 3) Le montant de la TPS et/ou TVQ séparé pour chaque article de la gamme
- 4) Le montant de la TPS et/ou TVQ pour la facture

Ontario retail sales tax exempt vendor permit No. 1233-6386  
No. 1233-6386 d'exemption de taxe de vente au détail de l'Ontario

Cindy Curry  
Hershey Canada, Inc.

FAX NO. 7175347754

P. 03

**THE**